

Exhibit 4

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 250

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
)
)

5 CUSTOMS AND TAX ADMINISTRATION OF)
6 THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
7 SCHEME LITIGATION)
)

8 This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)
9)

10
11
12 C O N F I D E N T I A L
13 SUBJECT TO THE PROTECTIVE ORDER
14

15 CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER
16 ORAL EXAMINATION OF
17 JOHN VAN MERKENSTEIJN
18 VOLUME II
19 DATE: April 20, 2021
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21
22
23
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 251

1 TRANSCRIPT of the continued videotaped
2 deposition of the witness, Volume II, called for
3 Oral Examination in the above-captioned matter, said
4 deposition being taken by and before MICHAEL
5 FRIEDMAN, a Notary Public and Certified Court
6 Reporter of the State of New Jersey, via WEBEX, ALL
7 PARTIES REMOTE, on April 20, 2021, commencing at
8 approximately 10:33 in the morning.

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Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 366

1 dissolved?

2 A I think just a cost-cutting
3 exercise.

4 Q Was there any need for the
5 partnerships after Denmark stopped paying
6 reclaims?

7 A There was no need. There was an
8 opportunity to use them, but we -- you know,
9 we decided to -- I guess we decided to
10 terminate them.

11 Q Mr. Van Merkensteijn, in the
12 litigations in which you are a defendant, are
13 you asserting as a defense the advice -- the
14 reliance on advice of counsel?

15 A I relied on counsel.

16 Q And you are asserting that as a
17 defense in the case?

18 A I believe so, yes.

19 Q From which lawyers did you receive
20 advice that you are relying on as a defense
21 in the litigation?

22 A From Kaye Scholer and other firms
23 that we used from time to time.

24 Q What other firms did you use and
25 receive advice from that you were relying on

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 367

1 as a defense in this -- in these actions?

2 A Early on, we had another law firm
3 involved. I'm bad on names, so I am trying
4 to remember the name, and I'll think of it in
5 a minute.

6 Crowell & Moring.

7 Q When you say "early on" --

8 A I'm trying to --

9 Q I'm sorry. If I can stop you on
10 that one.

11 You mentioned early on you used
12 Crowell & Moring.

13 During what period of time?

14 A They were involved at the time we
15 first started working with Solo.

16 Q Did you receive advice from Crowell
17 & Moring that you were relying on as a
18 defense in these actions?

19 A I can't -- I can't -- I'm just
20 telling you what law firms we used. I don't
21 know what we're relying on in this action.

22 MS. MCCARTHY: Marc, I'm going to
23 object. We've done a broad waiver of
24 attorney/client privilege and we've
25 asserted a reliance defense. So I

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 369

1 Q On what issues did Crowell & Moring
2 provide you legal advice in connection with
3 dividend arbitrage trading?

4 A I don't recall. What I recall is
5 that they were involved at the time we first
6 started negotiating an agreement with Solo.

7 Q Negotiating which agreement?

8 A An agreement.

9 Q Do you recall what that agreement
10 was?

11 A No.

12 Q How many agreements have you had
13 with Solo?

14 A I think the agreement with Solo has
15 modified itself over time. I don't know if
16 it was in written form or just verbally
17 negotiated.

18 I don't know what we did in the
19 end.

20 Q So, as you sit here today, you
21 don't recall specifically what advice Crowell
22 & Moring provided, but you know they were
23 involved in the negotiations of the first
24 agreement with Solo?

25 A That's what I recall now, yeah.

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 372

1 them.

2 Q Did they actually provide you with
3 legal advice regarding the issues on whether
4 they were qualified under the Internal
5 Revenue code?

6 A I don't recall specific advice. We
7 asked them to organize the plans, they
8 organized the plans.

9 If they weren't qualified, then I
10 would have heard about it somehow.

11 Q Did Kaye Scholer provide you legal
12 advice regarding the requirements under the
13 Danish U.S. double taxation treaty?

14 A Well, the underlying principal of
15 the transaction was to have pension plans
16 that qualified under the treaty, and they
17 formed them.

18 So did we get written advice that
19 said that they qualified? I don't know.

20 But we asked them to form entities
21 that qualified, and they did.

22 Q Did Kaye Scholer provide legal
23 advice regarding whether the pension plans
24 were the beneficial owners of the securities
25 at issue in the Danish trading?

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 373

1 A Again, I don't have specific
2 concrete building blocks of what advice they
3 gave us. We gave them everything we did. We
4 gave them all the information about
5 everything as we went along.

6 And if they had seen any red flags,
7 which occasionally on some issue or another
8 they did, we would discuss it, figure out how
9 to resolve it, or if we saw a red flag, they
10 would help us resolve it.

11 So I don't recall.

12 Q Do you recall any red flags that
13 you or the group brought to Kaye Scholer's
14 attention?

15 A I don't know who originated some of
16 the issues about the Commodity Trading
17 Securities Law aspects.

18 I don't know who raised those
19 issues.

20 Q Do you recall any other red flags
21 that you or the Argre group brought to
22 Kaye Scholer's attention?

23 A I can't recall.

24 Q Do you recall any red flags that
25 Kaye Scholer raised after getting the

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 383

1 discussions with Kaye Scholer about that
2 question?

3 A Again, we're talking about ten
4 years ago. I don't remember the discussions.

5 Q Do you recall having any
6 discussions with Kaye Scholer about that same
7 question, but in the context of the U.S.
8 Denmark trading?

9 A I don't recall the specific
10 conversations, no.

11 Q All right. Do you know if you
12 received any written advice from them on that
13 issue?

14 A On which issue?

15 Q Whether a 401(k) or other similar
16 pension plan that can be easily set up,
17 controlled, and administered would meet the
18 definition of a pension within the meaning of
19 the U.S. Denmark treaty?

20 A Well, again, if that answer had
21 been negative, we would not have proceeded.

22 Q So were you operating at the time
23 under the assumption that if Kaye Scholer had
24 raised an issue, and then the transaction
25 proceeded, that Kaye Scholer had resolved the

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 384

1 issue?

2 MR. DEWEY: Objection.

3 A Looking back at it, yes. I take
4 the advice of lawyers. If they say it
5 doesn't work, I wouldn't do it.

6 Q Did you have substantive
7 discussions with them about the issues, or
8 did you rely on them to resolve them, and if
9 they went forward, you assume they were
10 resolved?

11 A Well, at the time I may have had
12 substantive discussions. I don't recall
13 them.

14 My entire career from the time I
15 was a beginning lawyer is always to have
16 other lawyers involved in every step of every
17 transaction that I do.

18 Q Okay. Turning back to the first
19 page, that first sentence underneath, where
20 it says "by way of background?"

21 A Yes.

22 Q Would you say that that accurately
23 describes the trading in Denmark as well?

24 A (Witness reviewing.)

25 No, I don't know that.

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 385

1 Q Okay. Were the pension plans in
2 the Danish transactions seeking a tax refund
3 from the Danish government for taxes that
4 they did not, in fact, pay?

5 A I don't know that.

6 Q You don't know one way or the
7 other?

8 A I don't know one way or the other,
9 right.

10 Q Can you turn, please, to
11 Exhibit 2234?

12 MR. WEINSTEIN: Mark this as 2234.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 A Okay. Hard to read.

16 (Witness reviewing.)

17 Q At the bottom of the first page,
18 there's an e-mail from Mr. Markowitz to
19 someone named Axel Haelterman at the
20 Freshfields law firm.

21 A Okay.

22 Q Are you familiar with that firm?

23 A I'm familiar with the firm, yes.

24 Q Do you recall whether your group
25 sought any legal advice from Freshfields in

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 386

1 connection with dividend arbitrage trading?

2 A Well, it appears from the e-mail
3 that we did, yes.

4 Q In his e-mail, Mr. Markowitz says,
5 "I believe that some colleagues of ours at
6 Solo Capital contacted you on our behalf."

7 Did you consider the people at
8 Solo Capital to be your colleagues?

9 A I don't know what he meant by the
10 word "colleague."

11 Q Do you know why Solo Capital
12 contacted the Freshfields firm on your
13 behalf?

14 A I don't know.

15 Q Do you recall having any
16 discussions with any lawyers at Freshfields
17 in connection with dividend arbitrage
18 trading?

19 A Me? No, I don't recall.

20 Q Mr. Haelterman responds on
21 April 23, 2012, and says, "Further, to our
22 phone calls, and prior to finalize any
23 document, I first wanted you to review the
24 wording that you will find attached in the
25 unfinished draft memo. I just wanted to make

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 392

1 And that's shortly after that Danish article
2 about reclaim processing stopping came out.

3 Do you recall that?

4 A Yes.

5 Q And Mr. Markowitz attaches an
6 opinion from the Hannes Snellman law firm to
7 Solo Capital?

8 A Right.

9 Q Do you know why Mr. Markowitz was
10 sending you that opinion on September 2,
11 2015?

12 A I don't recall.

13 Q Do you know if that opinion that he
14 attached is one that you had seen at all
15 prior to September 2, 2015?

16 A Well, it's familiar, but I don't
17 recall when I first saw it.

18 Q Do you know if that was advice that
19 you relied on at any point in time prior to
20 September 2, 2015?

21 A I think it formed the basis for the
22 conclusion that we could do the dividend
23 arbitrage transactions in Danish securities.

24 Q Was there a point in time prior to
25 September 2, 2015 that you saw it?

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

Page 395

1 A I don't have an exact date.

2 Somewhere in the 2000s.

3 Q Did Mr. Ben-Jacob provide you with
4 legal services prior to any Solo transactions
5 being on the table?

6 A Yes, he did.

7 Q Does he continue to be an attorney
8 for you up through today?

9 A Yes, he does.

10 Q Over the course of -- well,
11 withdrawn.

12 So would you say you have a 15 to
13 20-year relationship with him, a business
14 relationship?

15 MR. DEWEY: Objection.

16 A Yeah, I don't know how to do the
17 calculation because I can't remember when we
18 were first starting to work with each other.

19 He was introduced to me through
20 another partner of a firm that he was at at
21 the time, and I started working with him on
22 trust and estates and other matters for me,
23 and I just don't recall when that started.

24 But it was prior to any of these
25 dates.

Confidential – Subject to The Protective Order
John Van Merkensteijn – April 20, 2021

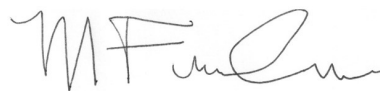
Page 451

C E R T I F I C A T E

I, MICHAEL FRIEDMAN, a Certified Court Reporter and Notary Public, qualified in and for the State of New Jersey do hereby certify that prior to the commencement of the examination JOHN VAN MERKENSTEIJN was duly sworn by me to testify to the truth the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER certify that I am neither a relative of nor employee nor attorney nor counsel for any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



MICHAEL FRIEDMAN, CCR of the
State of New Jersey
License No: 30XI00228600
Date: April 21, 2021